

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

BRAD CORY BRIGGS

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	Citizen of Another State	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2

Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	LABOR	<input type="checkbox"/> 510 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 520 Habeas Corpus: 530 General	<input type="checkbox"/> 791 Empl. Rel. Inc. Security Act	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	IMMIGRATION	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C SECTION 1692
Brief description of cause:
Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S)

(See instructions):

JUDGE

DOCKET NUMBER _____

Explanation:

1-10-11

SIGNATURE OF ATTORNEY OF RECORD

DATE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 205 Shady Pl. Apt 4, Daytona Beach, FL 32114

Address of Defendant: 507 Prudential Road, Hershman, PA 19044

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations

7. Civil Rights

8. Habeas Corpus

9. Securities Act(s) Cases

10. Social Security Review Cases

11. All other Federal Question Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thorkimmel, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 1-10-11

Craig Thorkimmel
Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1-10-11

Craig Thorkimmel
Attorney-at-Law

57100

Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIACASE MANAGEMENT TRACK DESIGNATION FORM

Brad Cory Briggs : CIVIL ACTION
 v. :
 NCO Financial Systems, Inc. : NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

1-10-11

Date

Craig Throckmorton

Attorney-at-law

Brad Cory Briggs

Attorney for

215-540-8888

Telephone

877-788-2864

FAX Number

Kmmel@creditkws.com

E-Mail Address

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

BRAD CORY BRIGGS,)
Plaintiff)
v.)
NCO FINANCIAL SYSTEMS, INC.,) Case No.:
Defendant)
) COMPLAINT AND DEMAND FOR
) JURY TRIAL
) (Unlawful Debt Collection Practices)

COMPLAINT

BRAD CORY BRIGGS ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C.,
alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

20 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
21 that such actions may be brought and heard before “any appropriate United States district court
22 without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original
23 jurisdiction of all civil actions arising under the laws of the United States.

24 3. Defendant conducts business and has an office in the State of Pennsylvania and
25 therefore, personal jurisdiction is established.

- 1 4. Venue is proper pursuant to 28 U.S.C. § 1331(b)(1).
- 2 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
- 3
- 4

PARTIES

5 6. Plaintiff is a natural person residing in Daytona Beach, Florida, 32114.
6
7 7. Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C.
8
9 §1692K(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec 22, 2000).

10 8. Defendant is a national debt collection company with corporate headquarters
9 located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

11 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),
12 and repeatedly contacted Plaintiff in an attempt to collect a debt.

13 10. Defendant acted through its agents, employees, officers, members, directors,
14 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

17 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,
18 which prohibits a catalog of activities in connection with the collection of debts by third parties.
19 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that
20 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,
21 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
22 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and
23 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
24 unconscionable conduct, both generally and in a specific list of disapproved practices.
25

1 12. In particular, the FDCPA broadly enumerates several practices considered
2 contrary to its stated purpose, and forbids debt collectors from taking such action. The
3 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
4 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
5 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
6 collector may not use any false, deceptive, or misleading representation or means in connection
7 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
8 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
9 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
10 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
11 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
12 connection with the collection of a debt.

14 13. In enacting the FDCPA, the United States Congress found that “[t]here is
15 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
16 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
17 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
18 additionally found existing laws and procedures for redressing debt collection injuries to be
19 inadequate to protect consumers. 15 U.S.C. § 1692b.

21 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
22 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
23 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
24 collection practices are not competitively disadvantaged, and to promote consistent State action
25 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

FACTUAL ALLEGATIONS

15. Defendant and others it retained began in June of 2009 and continued until March of 2010 to constantly place harassing and abusive collection calls to Plaintiff, seeking and demanding payment for an alleged consumer debt of another person.

16. Upon information and belief, the alleged debt Defendant was seeking to collect arose out of transactions, which were primarily for personal, family, or household purposes.

17. Defendant, its employees, agents and servants harassed Plaintiff by making continuous calls to his cellular telephone number.

18. Plaintiff purchased a cellular phone from Metro PCS and the very first call he received was from Defendant's agent looking to collect a debt from an individual that previously owned the telephone number associated with Plaintiff's new cellular telephone.

19. Plaintiff informed Defendant's agent that they had the wrong person, that he did not know who they were looking for and requested that his number be deleted from Defendant's database. Defendant's agent told Plaintiff that his number would be deleted.

20. The next day Plaintiff received another telephone call from Defendant, once again looking to collect a debt from someone other than the Plaintiff.

21. Plaintiff has made repeated attempts to inform Defendant's agents that they had the wrong person, the wrong telephone number and to please remove his telephone number from the database.

22. Despite Plaintiff's requests and instructions not to contact him about another person's debt, Defendant and others it retained still continued to contact Plaintiff.

23. Defendant placed repeated calls to Plaintiff's cellular telephone almost every day, causing the Plaintiff to receive, at times four (4) to five (5) collection calls a day.

24. On one occasion after Plaintiff again informed Defendant's agent that he had called the wrong person, Defendant's agent rudely told Plaintiff that he would be arrested for not paying the debt.

25. To date, despite threats to the contrary, Defendant has not filed a police report or taken other legal action against Plaintiff; thereby indicating it did not intend to take the action previously threatened.

26. The repetitive calls to Plaintiff were disturbing, harassing, an invasion of privacy and caused Plaintiff to not answer his phone.

27. Defendant failed to investigate or verify contact information prior to and after calling Plaintiff.

28. Defendant failed to update its records to avoid further harassment of Plaintiff.

CONSTRUCTION OF APPLICABLE LAW

29. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

30. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the

Truth in Lending Act (TILA) 15 U.S.C. §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

31. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

COUNT I
DEFENDANT VIOLATED THE
FAIR DEBT COLLECTION PRACTICES ACT

32. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated of the FDCPA generally;
- b. Defendant violated § 1692b(2) of the FDCPA by informing Plaintiff of another person's debt;
- c. Defendant violated § 1692b(3) of the FDCPA by calling Plaintiff more than

1 once in connection for the collection of a debt for another individual;

2 d. Defendant violated § 1692c(b) of the FDCPA by communicating with

3 Plaintiff about a debt allegedly owed by another person;

4 e. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in

5 connection with the collection of an alleged debt;

6 f. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's

7 telephone to ring repeatedly or continuously with the intent to harass, annoy

8 or abuse Plaintiff;

9 g. Defendant violated § 1692e(5) of the FDCPA by threatening to take action

10 that cannot legally be taken or that is not intended to be taken;

11 h. Defendant violated § 1692f of the FDCPA by using unfair and

12 unconscionable means with Plaintiff to collect or attempt to collect a debt;

13 i. Defendant acted in an otherwise deceptive, unfair and unconscionable manner

14 and failed to comply with the FDCPA.

15

16

17 WHEREFORE, Plaintiff, BRAD CORY BRIGGS, respectfully pray for a judgment as

18 follows:

19 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §

20 1692k(a)(1);

21 b. Statutory damages of \$1,000.00 for each violation of the FDCPA pursuant to

22 15 U.S.C. § 1692k(a)(2)(A);

23 c. All reasonable attorneys' fees, witness fees, court costs and other litigation

24 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and

25 d. Any other relief deemed appropriate by this Honorable Court.

1 **DEMAND FOR JURY TRIAL**

2 PLEASE TAKE NOTICE that Plaintiff, BRAD CORY BRIGGS, demands a jury trial in
3 this case.

4
5 RESPECTFULLY SUBMITTED,

6
7 DATED: 1-10-11

KIMMEL & SILVERMAN, P.C..

8
9 By:

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11 Attorney ID # 57100
12 Kimmel & Silverman, P.C.
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